

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TRYSTAN C.,

Claimant,

OAH No. 2011080787

vs.

NORTH BAY REGIONAL CENTER,

Service Agency.

DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, in Santa Rosa, California, on October 5, 2011.

Claimant was represented by his father, Mark C.

The North Bay Regional Center was represented by Kristen Casey, Attorney at Law.

The matter was submitted for decision on October 5, 2011.

ISSUE

Is North Bay Regional Center obligated to pay for the full cost of converting the family's van?

FACTUAL FINDINGS

1. Claimant is an 11-year-old boy with cerebral palsy, seizure disorder, and visual cortical blindness. He must use a wheelchair and is completely dependent upon others for all of his daily living needs. Claimant lives at home with his parents and his two younger siblings. He is a consumer of North Bay Regional Center (NBRC).

2. In October 2005 claimant's parents purchased a new 2005 Toyota Sienna. Following an administrative hearing in Case No. N2005040416, NBRC was ordered to pay

\$22,596 toward the cost of the conversion requested by claimant so that the Toyota Sienna would accommodate claimant and his wheelchair. The Toyota Sienna was subsequently converted with a side-entry conversion manufactured by the Braun Corporation. Claimant's parent carried insurance on their converted van which included paying sales tax on the value of the vehicle.

3. On April 22, 2011, claimant's mother was in an automobile accident and the 2005 Toyota Sienna was totaled. The van had 71,164 miles and was considered in excellent condition. Claimant's parent insurance carrier appraised the totaled vehicle at \$32,750, based on comparisons with comparable "conversion vans" in their community. The total amount of the insurance proceeds was \$35,697.51, which included sales tax in the amount of \$2,947.51.

4. Claimant parents have purchased a 2011 Toyota Sienna minivan to replace their totaled vehicle. They have obtained an estimate for a rear entry conversion (which is less expensive than a side-entry conversion) from Adaptability, a vendor of NBRC. They requested NBRC to fund the full cost of the conversion, which is \$26,283. There is no sales tax associated with the cost of the conversion.

5. In a notice of proposed action dated July 19, 2011, NBRC advised claimant's family that it would fund up \$11,782.89 for the van conversion. The stated reason for its action was

NBRC can only fund purchases that are cost-effective
NBRC cannot duplicate funding. Client's family received
insurance settlement for loss of van and van conversion.

6. The parties agree that the new van must be modified to accommodate claimant and his wheelchair. The parties are also in agreement that the type of conversion requested by claimant's family is appropriate. Their only disagreement is how much of the cost of the necessary van conversion will be paid by the service agency.

7. NBRC argues that some of the insurance proceeds for the family's 2005 Toyota Sienna are reflective of the increased value of the van due to the conversion which it paid for. NBRC further argues that the family should be expected to use those proceeds towards the cost of the conversion of the new van.

In order to calculate the amount of the conversion the family should pay, NBRC Adult Unit Supervisor Deanna Heibel looked to the on-line Kelly Blue Book for the value of unconverted 2005 Toyota Sienna, added sales tax, and subtracted that sum from the amount of the insurance proceeds. Kelley Blue Book rates vehicles by condition (excellent, good, and fair). Heibel initially came up with a figure based on the average of the values of good and fair conditions. Based on proof submitted at hearing that the insurance company had found the 2005 Toyota Sienna to be in excellent condition, NBRC agreed to use the higher Kelley Blue Book value of \$21,135, to which she added sales tax of \$1,742, for a total value

of \$22,877. Subtracting that figure from the \$35,697.51 in insurance proceeds, NBRC believes the family has received \$12,021 in proceeds which are attributable to the van conversion, to which the family should apply to the cost of conversion of the new van they have purchased. NBRC has agreed to pay the remaining cost of the conversion which is \$13,557.

Claimant's Evidence

8. Tom King is the General Manager of Marin Volvo. In a letter dated September 30, 2011, King opines that the Kelley Blue Book is not an appropriate tool for valuing a vehicle that has been converted. He writes,

Once a vehicle has been converted and is no longer a stock or standard vehicle, the use of the [Kelley] Blue Book is no longer an appropriate tool to establish an accurate value for that vehicle.

Vehicles that have been converted must be compared to other vehicles with similar conversions that are currently on the market in order to establish an accurate market value.

9. The Braun Company, which manufactured the initial conversion, will not provide a retail value of the parts used in a retail conversion, as its conversion is manufactured and sold as a complete unit. In addition, the company will not repair or authorize the repair of a van converted by the company that has been involved in a collision which has damaged the structural integrity of the vehicle.

10. Claimant's parents paid for insurance of the vehicle, which included a separate schedule for sales tax based on the value of a loss. NBRC did not pay for any portion of the insurance. NBRC did not advise claimant's parents of any requirement for insuring the van conversion.

11. NBRC policy regarding the purchase of equipment for clients, including a van conversion, is that the equipment becomes the property of the client. Clients are responsible for maintaining the equipment per the manufacturer's instructions, and to purchase a service contract for the equipment if one is available. (Procedure Memo 2320.)

LEGAL CONCLUSIONS

1. Under the Lanterman Developmental Disabilities and Services Act, individuals with developmental disabilities have the right to services and supports directed toward the achievement of the most independent and normal lives possible. Services and supports should be flexible and individually tailored to the consumer and, where appropriate, his or her family. (Welf. & Inst. Code, § 4648, subd. (a)(2). Under the Act, consumers and, where appropriate, their parents, are empowered to make choices in all life areas. (Welf. &

Inst. Code, §§ 4501& 4502, subd. (j).) Regional centers must respect the choices made by consumers and their parents. (Welf. & Inst. Code, § 4646, subd. (a).)

2. But the requirement that regional centers respect consumers' choices does not mean that developmentally disabled individuals and their parents are entitled to unfettered choice in deciding which services and supports are to be provided. Because regional centers are subject to budgetary and fiscal constraints, the Act requires that they implement services and supports in a cost-effective way. Services and supports must not only reflect the preferences and choices of the consumer, but also the cost-effective use of public resources. (Welf. & Inst. Code, § 4646, subd. (a).) In addition, the regional center must utilize generic resources and supports where appropriate. (Welf. & Inst. Code, § 4646.4, subd. (a)(2).)

3. Neither the Lanterman Act appeal process (§ 4700 et seq.) nor its implementing regulations (Cal. Code Regs., tit. 17, § 50900 et seq.) assigns burdens of proof. Here there is no dispute that claimant is entitled to the van conversion. The issues in this case concern the existence of a generic resource (insurance proceeds) and the value of the generic resource. Because these are matters raised by the regional center as a defense to their obligation to pay for a needed support, it is appropriate that they bear the burden of establishing each fact which is essential to their claim. (Evid. Code, § 500.) And, as there is no statute that provides otherwise, the standard of proof to be applied in this proceeding is the preponderance of the evidence. (Evid. Code, § 115.)

Discussion

4. The evidence establishes that the insurance company valued the 2005 Toyota Sienna as a conversion van. As such, there is no question that some portion of the value of the van was attributable to the fact that it was converted. And for that reason, some portion of the insurance proceeds was attributed to the conversion.

The argument of claimant's parents that NBRC does not have a right to any of the proceeds of insurance they paid for is technically correct. As the insureds, they are the ones who are entitled to the insurance proceeds. NBRC does not argue to the contrary, for they are not seeking to impose a lien on the insurance proceeds.

The argument of claimant's parents that the van conversion has no value independent of the converted vehicle may also have some technical merit, but that begs the question presented here. Some percentage of the value of their 2005 Toyota Sienna is attributable to the fact of the conversion, and it would be disingenuous to suggest that it is not. Because the family is asking NBRC to fund another conversion, it is reasonable and proper for NBRC to view some portion of the insurance proceeds to be a generic resource for the cost of the new conversion.

The only remaining question is how to determine the amount of the proceeds attributable to the conversion. The insurance documents presented in evidence do not break out the value the insurance company attributed to the conversion, which is unfortunate.

While Kelley Blue Book may not be an appropriate resource to value a converted 2005 Toyota Sienna, it is a reliable resource to value an unconverted 2005 Toyota Sienna in excellent condition. And it is reasonable to attribute the difference in that figure from the value the insurance company place on the converted van to the conversion itself. The remaining question concerns the \$2,947.71 in insurance proceeds that represents the sales tax on the loss unit. As this was a separate rider paid for by the family, and the conversion itself is not subject to sale tax, it is concluded that this sum should not be considered in valuing the generic resource.

In sum, the insurance company proceeds on the 2005 Toyota Sienna (excluding sales tax) are \$32,750. The value of an unconverted 2005 Toyota Sienna in excellent condition is \$21,135. The difference in these values is \$10,615. NBRC may consider this amount to be a generic resource which claimant's parents must advance toward the conversion of the 2011 Toyota Sienna. NBRC must pay the remainder of the cost of the conversion, which is \$15,668.

ORDER

Claimant's appeal is granted in part and denied in part. Claimant is not entitled to have North Bay Regional Center pay the full cost of the van conversion. However, NBRC may only require claimant's parents to pay \$10,615 toward the cost of the conversion, a sum less than set forth in the Notice of Proposed Action.

DATED: October 17, 2011

MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.